

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Criminal Action No. 96-09-JJF
	:	
	:	Civil Action No. 98-748-JJF
ROBERT D. CAMMILE,	:	
	:	
Defendant.	:	

Richard G. Andrews, Esquire, Acting United States Attorney of
the UNITED STATES DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for Plaintiff.

Robert D. Cammile, Pro Se Defendant.

MEMORANDUM OPINION

August 1, 2001

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court is a Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside Or Correct Sentence By A Person In Federal Custody (D.I. 52) filed by Defendant, Robert D. Cammille For the reasons set forth below, Defendant's Section 2255 Motion will be denied.

BACKGROUND

On June 6, 1996, Defendant pled guilty to Carjacking in violation of 18 U.S.C. § 2119 and Use Of A Firearm During And In Relation To A Violent Crime in violation of 18 U.S.C. § 924(c)(1). On October 28, 1996, the Court sentenced Defendant to consecutive prison terms of 175 months on the carjacking charge and 60 months on the firearms charge. The Court also imposed three years of supervised release on each charge to run concurrently, \$270.00 in restitution fees for the carjacking charge, and a \$50.00 special assessment for each charge.

Defendant appealed the Court's Judgment of Conviction on November 4, 1996. On July 16, 1997, the Third Circuit affirmed the Court's Judgment of Conviction. (D.I. 51).

On December 22, 1998, Defendant filed the instant Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside Or Correct Sentence. By his Motion, Defendant contends that his sentence

violates double jeopardy, because the Court required his sentence for use of a firearm to run consecutively with his sentence for carjacking. The Government has filed a Response to the Motion, and therefore, the Motion is ripe for the Court's review.¹

DISCUSSION

In response to Defendant's Motion, the Government contends that Defendant's Section 2255 Motion is time barred under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). Effective April 24, 1996, the AEDPA amended 28 U.S.C. § 2255 to impose a one year limitations period on the filing of Section 2255 motions. In pertinent part, Section 2255 provides that the statute of limitations begins to run from the latest of:

- (1) the date on which the judgment becomes final;
- (2) the date on which the impediment to making a

¹ Defendant has filed a Supplemental Motion To Vacate, Set Aside, Or Correct All Errs (D.I. 65) in which Defendant appears to request an evidentiary hearing on his claims. However, the Court concludes that it can fully evaluate the issues presented by Defendant on the record before it. Accordingly, the Court concludes that an evidentiary hearing is not warranted in this case. Government of the Virgin Islands v. Forte, 865 F.2d 59, 62 (3d Cir. 1989) (holding that evidentiary hearing not required where motion and record conclusively show movant is not entitled to relief and that decision to order hearing is committed to sound discretion of district court), appeal after remand, 904 F.2d 694 (3d Cir. 1990), cert denied, 500 U.S. 954 (1991).

motion created by governmental action in violation of the constitution or laws of the United States is removed;

(3) the date on which the right asserted was initially recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255.

In this case, Defendant's conviction became final upon the expiration of the time period in which Defendant could have sought certiori review of the Third Circuit's decision affirming the Court's Judgment of Conviction. Kapral v. United States, 166 F.3d 565, 577 (3d Cir. 1999). Accordingly, Defendant's conviction became final in October 1997, 90 days from the Third Circuit's July 16, 1997 decision. Id.

Applying the one year limitations period from the date Defendant's conviction became final, Defendant was required to file his Section 2255 Motion no later than October 1998. However, Defendant's Motion in this case was not filed until December 1998, and Defendant has not offered any evidence suggesting that the statute of limitations should be tolled. Accordingly, the Court concludes that Defendant's Motion is time barred under the AEDPA, and therefore, Defendant's

Section 2255 Motion will be denied.²

CONCLUSION

For the reasons discussed, the Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside Or Correct Sentence By A Person In Federal Custody filed by Defendant, Robert D. Cammile, will be denied.

An appropriate Order will be entered.

² Defendant also filed a Motion For Judgment By Default dated March 29, 2001 alleging that the Government failed to file its Response to Defendant's Motion pursuant to the Court's previous Order. However, the docket indicates that the Government's Response was timely filed and that Defendant even filed a traverse to the Government's Response (D.I. 55 & 56). Accordingly, Defendant's Motion For Judgment By Default will be denied as moot.

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O R D E R

At Wilmington, this 1 day of August 2001, for the reasons
set forth in the Memorandum Opinion issued this date,

IT IS HEREBY ORDERED that:

1. Defendant's Motion Under 28 U.S.C. § 2255 To Vacate,
Set Aside, Or Correct Sentence By A Person In Federal Custody
(D.I. 52) is DENIED.

2. Defendant's Motion For Judgment By Default dated
March 29, 2001, is DENIED AS MOOT.

3. Because the Court finds that Defendant has failed to
make "a substantial showing of the denial of a constitutional
right" under 28 U.S.C. § 2253(c)(2), a certificate of
appealability is DENIED.

UNITED STATES DISTRICT JUDGE